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|-------------------------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.               | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/538,970                    | 06/14/2005  | Gerhard Heitze       | HM-641PCT           | 9495             |
| 40570                         | 7590        | 09/09/2008           | EXAMINER            |                  |
| FRIEDRICH KUEFFNER            |             |                      | LANDRUM, EDWARD F   |                  |
| 317 MADISON AVENUE, SUITE 910 |             |                      | ART UNIT            | PAPER NUMBER     |
| NEW YORK, NY 10017            |             |                      | 3724                |                  |
| MAIL DATE                     |             | DELIVERY MODE        |                     |                  |
| 09/09/2008                    |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                      |
|------------------------------|--------------------------------------|--------------------------------------|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/538,970 | <b>Applicant(s)</b><br>HEITZE ET AL. |
|                              | <b>Examiner</b><br>Edward F. Landrum | <b>Art Unit</b><br>3724              |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 01 August 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 5-9 is/are pending in the application.
- 4a) Of the above claim(s)       is/are withdrawn from consideration.
- 5) Claim(s)       is/are allowed.
- 6) Claim(s) 5-9 is/are rejected.
- 7) Claim(s)       is/are objected to.
- 8) Claim(s)       are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No.      .
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date
- 5) Notice of Informal Patent Application
- 6) Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mckee (European Publication No. 0075448).

Mckee teaches (see Figure 1) a crank shear comprising two pairs of blades (4 and 5) mounted on blade holders (2 and 3), wherein the blade holders (2 and 3) are supported opposite each other in a vertical plane in a pair of eccentric shafts (circular portion found in the middle of both 2 and 3). The eccentric shafts are pivoted on levers (6 and 20) in double joint mechanisms (7 and 21). The blade holders (2 and 3) have many pairs of axially parallel bearing surfaces and radial projections (to the left of blade 4, between blades 4 and 5, and after blade 5; see Figure 1). The upper blade holder (2) has inner facing bearing surfaces within a recess that the blades (4 and 5) are arranged on. The lower blade holder (3) are arranged on outer, oppositely directed bearing surfaces of a narrow projection (projecting attachment portion found between the blades on the lower blade holder) oriented towards the recess.

When support levers (6 and 20) are spread to form an approximately 90 degree angle an upper piston rod device (11) attached to the double joint mechanism (7) is fully extended and a lower piston rod device (25) attached to the double joint mechanism

(21) is retracted. When support levers (6 and 20) are brought together to become substantially parallel to the strip of material being cut (30) the upper piston rod device (11) attached to the double joint mechanism (7) is fully retracted and the lower piston rod device (25) attached to the double joint mechanism (21) is extended. In this position the upper and lower double joint mechanisms (7 and 21) extended approximately linearly with each other (see Figure 1). Furthermore McKee teaches (Pg. 6, lines 2—27; Pg. 7, lines 1-6) the upper blade carrier (2) being able to be swung to a position outside of its normal shearing position to make it easier to replace the blades (4 and 5). As seen in Figure 1 each lower blade has a face that faces away from the other blade. Both of these faces have a completely exposed surface (top portion of each outward face extending above the lower blade holder 3).

McKee teaches all of the elements of the current invention as stated above except the upper blade recess being curved, the projection being formed of a single piece with the lower blade holder.

It would have been an obvious matter of design choice to modify McKee to have the recess the inner blades be curved, since Applicant has not disclosed that having a curved recess in the upper blade holder solves any stated problem or is for any particular purpose and it appears that the shearing device would perform equally well with any shape recess provided the recess sufficiently supported the cutting blades.

Furthermore, it has been held the use of a one piece construction instead of structure formed of more than one piece would be merely an obvious engineering choice. Therefore it would have been an obvious matter of design choice to modify

Mckee by having the projection be formed as one piece with the lower blade holder, since applicant has not disclosed that having the projection being formed on the lower blade holder solves any stated problem or is for any particular purpose and it appears the clamps would perform equally well with or without the projection being formed with the lower blade holder.

3. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mckee in view of Fries (U.S Patent No. 3,643,537).

Mckee teaches all of the elements of the current invention as stated above except the blade holders capable of being moved away from the material being cut to allow passage of the material.

Fries teaches (Col. 1, lines 1-9) a pair of shearing arms capable of being rotated out of position for the purpose of executing a variably adjustable number of miss-cuts between effective cutting operations.

It would have been obvious to have modified Mckee to incorporate the teachings of Fries to allow the cutters to be rotated about the eccentric shafts to non-cutting positions for the purpose of allowing material to be passed through the machine without being cut. This would allow the shearing machine to shear variable length work pieces without having to turn off the entire machine or take both of the cutting heads out of the machine.

***Response to Arguments***

4. Applicant's arguments filed 8/1/2008 have been fully considered but they are not persuasive.

Applicant has not claimed the capability of loosening only one blade of the pair.

The structure claimed is not the structure disclosed in the specification. The limitations of the specification will not be read into the claims and therefore the blades are not inherently capable of being loosened independently as one could still incorporate a locking mechanism that still only allowed for both blades to be loosened at the same time. Based on the claims, the blades do not even have to be removable, they could be brazed, welded, or injection molded onto the blade holders.

Applicant has only claimed that each blade of the lower pair of blades has a completely exposed surface facing away from the other completely exposed surface. Figure 1 of McKee clearly shows that each blade of the lower pair of blades does have a completely exposed surface that faces away from other completely exposed surface (top portion of each outward face extending above the lower blade holder). The exposed surface, as claimed, does not have to be an entire face of the blade.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Elineau (U.S Patent No. 3,398,616), and Kagerhuber et al (U.S Patent No. 4,237,760) teach shearing devices that allow the blades to be positioned away from the material to be cut to allow passage of the material.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/E. F. L./  
Examiner, Art Unit 3724  
9/5/2008  
/Boyer D. Ashley/  
Supervisory Patent Examiner, Art Unit 3724